



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
220**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: COMPLAINTS AGAINST LABOR UNIONS**
2. **PURPOSE:** To set forth the procedures for accepting and processing complaints against labor unions.
3. **BACKGROUND:** The Department of Fair Employment and Housing (DFEH) has jurisdiction over employment discrimination complaints against labor unions and complaints from union members alleging that union benefits or protections were provided on a discriminatory basis, or that the union offices discriminated in making employment referrals on a basis protected by the Fair Employment and Housing Act (FEHA).

In Goodman v. Lukens Steel, 107 S.Ct. 2617, the United States Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits unions from "1) tolerating or tacitly approving discrimination; or 2) failing to pursue grievances alleging discrimination when discrimination is grievable under a collective bargaining agreement." As the FEHA contains language which tracks the relevant portions of Title VII, the Department **places the same interpretation** on the FEHA.

The FEHA also contains provisions governing union conduct, including prohibiting "labor organizations" from excluding, expelling or restricting a person from membership, providing "only second-class or segregated membership," or discriminating against any person on a basis enumerated in the FEHA. It also prohibits labor organizations from harassing an individual in retaliation for opposing discriminatory practices or for participating in any Department proceeding and harassing employees or applicants on any covered basis. Labor organizations can also be cited for failing to take all reasonable steps necessary to prevent discrimination and harassment from occurring and other such actions.

4. **PROCEDURES:**
 - A. **Acceptance of Complaints:**

Provided that basic intake standards are otherwise met, complaints asserting the following allegations will be accepted where:

- 1) A union member asserts that union services were provided or refused on a discriminatory basis.

- 2) A union member that he/she was denied the right to file a grievance alleging discrimination prohibited by a collective bargaining agreement or memorandum of understanding and by the FEHA. This category of complaint can include circumstances where the union or labor organization refers a complaint to DFEH while refusing to pursue a grievance.
- 3) A union failed to pursue a discrimination grievance with the same effort and consideration as accorded other issues.
- 4) Cases where a union knew of an employer's conduct, which violates the FEHA or is discriminatory under a collective bargaining agreement or memorandum of understanding, and failed to take actions available within the collective bargaining agreement. This could include circumstances where a union failed to enforce provisions of an agreement even where no member had filed a grievance.
- 5) An employer's unlawful act is connected to provisions in a collective bargaining agreement between an employer and a union representing the employees. For instance, collective bargaining agreements control rights such as seniority, promotion, and reinstatement to proper place. Since seniority often determines who is assigned lighter job duties, a collective bargaining agreement may affect reasonable accommodation to lighter duties in physical disability cases. In such cases, the union itself has not discriminated, but the employer asserts that its conduct is governed by language in a collective bargaining agreement.

B. Intake Procedures:

The following procedures will be applied when considering employment complaints involving labor unions:

- 1) During an intake interview, when a complainant advises the Consultant that the employer is covered by a collective bargaining agreement, the Consultant will inquire as to whether he/she has filed a union grievance on the alleged unlawful act. (Refer to Attachment 1 for examples of the types of questions which would be appropriate in these circumstances.)
- 2) When it is appropriate to name a union as a party to a complaint, a separate complaint will be taken in the following instances:
 - a) The complainant is alleging a denial of the right to file a grievance, failure by the union to pursue a discrimination grievance with the same effort and consideration as accorded other issues, or failure to take appropriate actions where the union knew of alleged unlawful

conduct by the employer, *and the allegations are separate from those against the employer*. A separate case number will be issued.

b) The complainant is alleging that an employer's unlawful actions are predicated on a collective bargaining agreement, or where the employer cites provisions of the collective bargaining agreement as the reason for an alleged discriminatory act, the union will be named as a co-respondent (refer to Directive 207, "Acceptance of Complaints Involving Co-Respondents or Parties Other Than the Primary Respondent").

3) In preparing supplements to service for complaints against unions, the attached questions should be included (refer to Attachment 2 - "Service Letter Questions for Labor Unions").

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

INTAKE QUESTIONS FOR EMPLOYMENT CASES INVOLVING LABOR UNIONS

1. Did the complainant ask a union officer or steward to file a grievance regarding an alleged act of discrimination covered by the collective bargaining agreement or memorandum of understanding?
2. Was the grievance filed? If yes, what is the status of that grievance?
3. Did the union address the grievance in the same fashion as grievances alleging other violations of the collective bargaining agreement?
4. Did the union refuse to accept the grievance? If yes, what reason was given?
5. Did the union have independent knowledge of the alleged discriminatory act(s)? If not, is there reason to believe that the union should have had knowledge?
6. If the union had knowledge of the discriminatory act, what steps (if any) were taken by the union to address the problem?
7. What are the provisions (if known) of the collective bargaining agreement or memorandum of understanding which relate to the alleged discrimination? (Inquire as to both specific provisions, [e.g., layoff, recall, disciplinary action, grievance procedure, seniority, etc.], as well as the provisions relating to discrimination.)

SERVICE LETTER QUESTIONS FOR LABOR UNIONS

1. Provide a copy(ies) of the collective bargaining agreement(s) or memorandum of understanding regarding the relationship between your organization and _____.
(employer)
2. State why the complainant's grievance was not accepted. Refer to sections of the collective bargaining agreement or memorandum of understanding which support the decision not to pursue the grievance.
3. State when your organization became aware of the employment practice complained of in the complaint and describe actions taken (if any) to address the employment practice.
4. Describe the actions taken to pursue the complainant's grievance.
5. State why the complainant's grievance was disposed of as it was.